

### REMARKS

In the outstanding Office Action, Claims 1 through 84 were rejected as obvious primarily on the basis of United States Patent No. 5,377,860 to *Littlejohn et al.* in view of United States Patent No. 5,269,430 to *Schlaupitz et al.* Various §112 rejections were also made; however, these rejections appear to have been inadvertently repeated from prior actions in this application.

The interview of October 7, 2004 is gratefully acknowledged. Following is a summary of the reasons advanced for allowance at that interview.

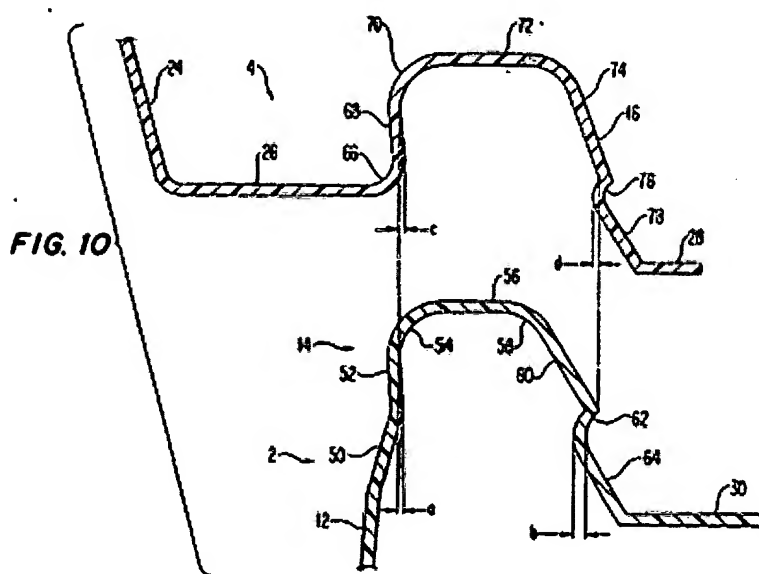
Turning first to outstanding §112 rejections, it is noted that the claims have been previously amended to eliminate antecedent basis issues and issues as to definiteness of the term "generally". Withdrawal of the §112 rejections in view of the prior amendments in this application is believed warranted. Likewise, the foregoing amendments to Claims 1 and 84 are believed to more clearly differentiate over the art of record.

*Littlejohn et al.* '860 teaches a sealing mechanism as part of a sealing brim identified separately from the sidewall. See Col. 5, lines 6-13 and Col. 7, lines 44-57.

**The base 2 of the container 1 includes a substantially planar bottom 10 and a substantially vertically extending peripheral sidewall 12. Integrally connected to the upstanding sidewall 12 is a sealing brim 14 which is received within a cooperating sealing brim 16 of the lid 10. The particular configuration of the sealing brims 14 and 16 as well as their cooperation with one another will be described in greater detail hereinbelow.**

Referring now to FIG. 10 wherein the base 2 and lid 4 are illustrated in partial cross sectional view, the base 2 includes the upstanding sidewall 12 which is integrally connected to the brim 14. The brim 14 is formed by a number of integrally formed and cooperating parts. The first of which is an upwardly extending peripheral base reinforcing hoop 50 which is integrally connected to the sidewall 12. As can be seen from FIG. 10, the base reinforcing hoop 50 is angled slightly outwardly in order to add strength to the brim 14. Integrally connected to the base reinforcing hoop 50 is an inwardly and upwardly tapering frusto-conical base seal area 52 which as with the base reinforcing hoop extends continuously about the perimeter of the base 12. As is illus-

Figure 10 of Littlejohn et al. '860



The reference also fails to suggest a base sidewall recess as appears in Figure 7 of the present application and in Claim 1. At the very least, the recitation of a **sidewall recess** requires a separately identifiable area in the sidewall as is seen from the *Webster's* definition:

**re·cess** (ri ses/Ē, rV/Ēses), *n.*

1. temporary withdrawal or cessation from the usual work or activity.
2. a period of such withdrawal.
3. a receding part or space, as a bay or alcove in a room.
4. an indentation in a line or extent of coast, hills, forest, etc.
5. **recesses**, a secluded or inner area or part: *in the recesses of the palace.* —*v.t.*
6. to place or set in a recess.
7. to set or form as or like a recess; make a recess or recesses in: *to recess a wall.*
8. to suspend or defer for a recess: *to recess the Senate.* —*v.i.*
9. to take a recess.

The substance of the Examiner's art rejection of Claim 1 is that it is obvious to place shelf **82** of *Schulaupitz et al.* '430 below shelf **52** of *Littlejohn et al.* '860 to arrive at the invention. That position is untenable for the following reason: there is no need whatsoever in *Littlejohn et al.* '860 for a shelf below sealing area at **52** because there is a shelf above **54** in the reference. Indeed, the Examiner's hypothetical construction results in a superfluous structure which obstructs the interior of the container. The rejection is based on hindsight only.

Figure 7 of present application

**FIG. 7**

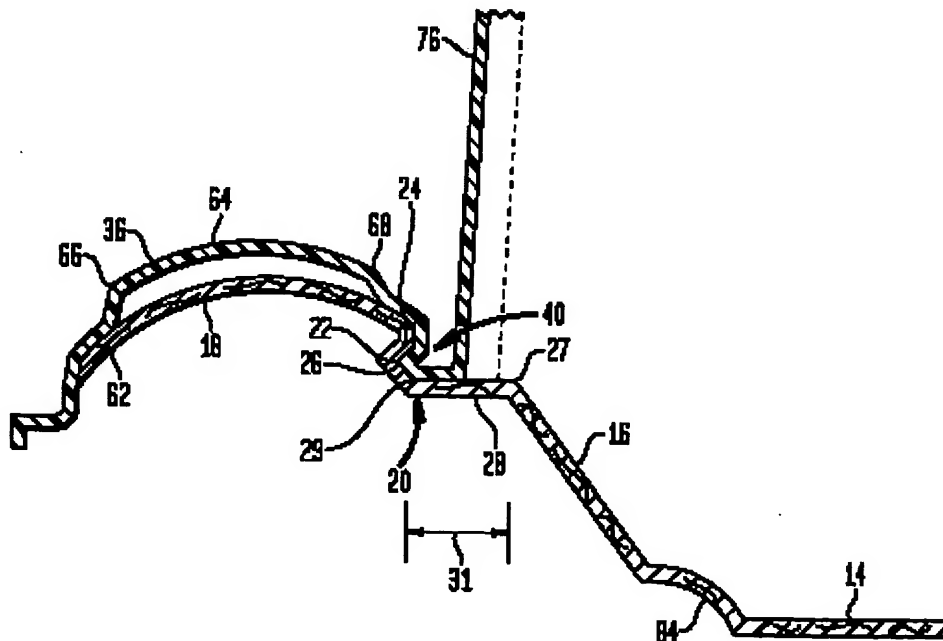
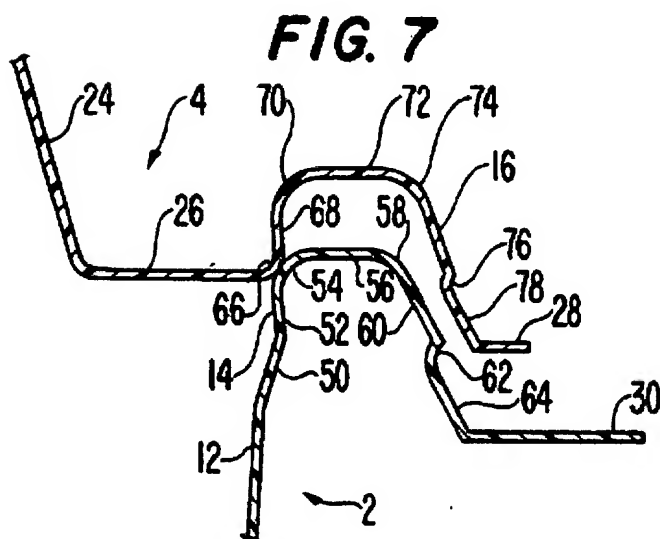
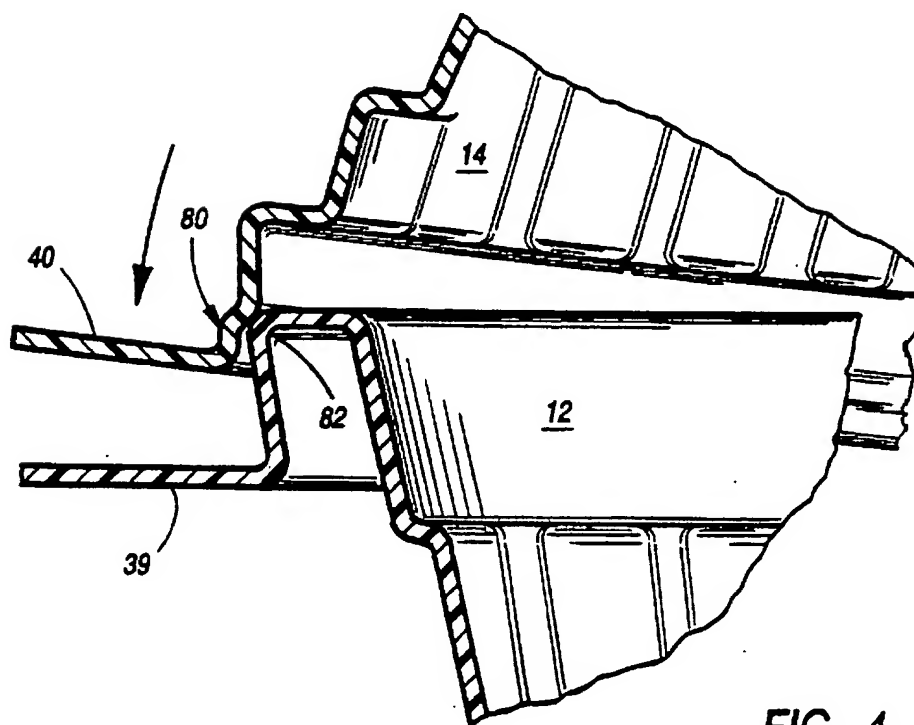


Figure 7 of Littlejohn et al.'860



**Figure 4 of Schlaupitz et al:**



**FIG. 4**

It can be seen from the above the art does not suggest a sidewall recess with a laterally extending internal shelf as is claimed in Claims 1 and 84 in this application.

In any event, it is further noted that the mere presence of claim elements in the art does not support an obviousness rejection. MPEP provides that there must be appropriate motivation provided to combine those elements as claimed:

#### **2143.01 Suggestion or Motivation to Modify the References**

##### **THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION**

“There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

“In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination, or other modification.” *In re Linter*, 458 F.2d 1013, 1016, 173 USPQ560, 562 (CCPA 1972).

Even if one combined *Schlaupitz et al.* '430 and *Littlejohn et al.* '860 as suggested by the Examiner, there is still no base stop ridge at the top of the sidewall recess of the base in the hypothetical combination as appears in Claim 1, element (a)(i). The rejection should accordingly be withdrawn.

Claim 53 and its dependent claims are likewise believed allowable. Claim 53 was rejected only as obvious over a proposed combination of four references, none of which suggest an inwardly convex annular base stacking recess as is recited in Claim 53 (84 in **Figure 8** of the present application).

New Claim 84 recites that the base outer flange portion defines a continuous arc from the sealing recess in the sidewall to the outer edge of the container. Support for this additional recitation appears in **Figure 7** (above) of the application as filed. The art of record does not remotely suggest the structure recited in Claim 84 which is accordingly believed most clearly allowable.

This Amendment is believed timely filed. If any extensions or fees are necessary, please consider this a *Petition* therefor and charge any fees to Deposit Account No. 50-0935.

Sincerely,

A handwritten signature in dark ink, appearing to read "MW Ferrell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael W. Ferrell  
Attorney for Applicants  
Reg. No. 31,158

Ferrells, PLLC  
P.O. Box 312  
Clifton, Virginia 20124-1706  
Telephone: 703-968-8600  
Facsimile: 703-968-5500  
November 2, 2004